IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19543 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 2 - Petitioner(s)
Versus
A P SRIVASTAVA - Respondent(s)

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Appearance :
MRS MAUNA M BHATT for Petitioner(s) : 1 - 3.MR MANISH R BHATT for Petitioner(s) : 1 - 3.
MS PAURAMI B SHETH for Respondent(s) : 1,
MR MS RAO for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The respondent who is hereinafter referred to as applicant had approached the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short " the Tribunal") by way of O.A. no.673/2004 and prayed that the DPC has wrongly not considered his case, and therefore, the authority be directed to consider his case. After hearing the applicant and the opponents-present petitioners, the learned Tribunal by its impugned order dated 30th March, 2005 allowed the application with a direction to the Chairman, CBDT to review the ACR of the applicant within one month from the date of receipt of the order and as a result of such review, fresh meeting of DPC be convened to review its own decision regarding the promotion of the applicant within three months thereafter.

2. Review Application no.43/2005 was filed by the opponents-present petitioners before the learned Tribunal against the aforesaid judgment

and order passed by the learned Tribunal which was barred by the period of limitation, and therefore,an application for condonation of delay was filed i.e. M.A. no.469/2005. However, the learned Tribunal by its impugned judgment and order dated 29-8-2005 dismissed the application for condonation of delay, and thereby, dismissed the review application on the ground of delay and laches. Thereafter, the learned Tribunal considered the review application on merits and dismissed the same on merits as well by its impugned order dated 29-8-2005. Hence, this petition.

3. Ms. Bhatt for the petitioners submitted that sufficient cause was shown for condoning the delay, but the learned Tribunal wrongly rejected the application for condonation of delay in filing the review application. She further submitted that having dismissed the application for condonation of delay, it was not open to the learned Tribunal to go into the merits of the

case and reject the review application on merits by circulation without giving an opportunity of hearing to them.

4. Ms. Sheth for the original applicant-present respondent had no objection if the impugned order dated 29-8-2005 is quashed and set aside and the matter is remitted to the learned Tribunal with a direction to decide the review application on merits after extending an opportunity of hearing to both the parties.

5. In view of the above, we grant M.A.469/2005 filed in R.A 43/2005 and direct the learned Tribunal to decide review application no.43/2005 on merits after hearing the learned Counsel for the parties. We hope and trust that the matter is heard as early as possible by the learned Tribunal after giving reasonable opportunity of being heard to both the parties, preferably, within one month from the date of receipt of this order.

6. Before parting with, we may state that we have not expressed any opinion on the merits of the case either in Misc.Application which was allowed by the learned Tribunal on 30th March, 2005 or the rejection order of review application on merits passed on 29-8-2005. With this observation and direction this petition is allowed to the aforesaid extent only. Interim relief granted earlier stands vacated. Rule is made absolute accordingly.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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